

Khalid (Migration) [2022] AATA 1890 (29 May 2022)

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DECISION RECORD

DIVISION:	Migration & Refugee Division
APPLICANT:	Mr Sohaib Khalid
LEGAL PRACTITIONER:	Mr Abu Siddque
CASE NUMBER:	2111349
HOME AFFAIRS REFERENCE(S):	BCC2021/1004520
MEMBER:	Jennifer Cripps Watts
DATE:	29 May 2022
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision not to grant the applicant a Student (Temporary) (Class TU) visa.

Statement made on 29 May 2022 at 2:09pm

CATCHWORDS

MIGRATION – Student (Temporary) (Class TU) visa – Subclass 500 (Student) – bogus document – bank certificate – accessible funds from another bank – investigation into ‘bank of concern’ – reasonable suspicion – decision under review affirmed

LEGISLATION

*Migration Act 1958, ss 5(1), 57, 65, 359
Migration Regulations 1994, Schedule 2 cl 500.217; Schedule 4, Public Interest Criterion 4020; r 1.03*

CASES

Trivedi v MIBP [2014] FCAFC 42

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

4. This is an application for review of a decision made by a delegate of the Minister for Home Affairs on 12 August 2021 to refuse to grant the applicant a Student (Temporary) (Class TU) visa under s 65 of the *Migration Act 1958* (Cth) (the Act).
5. The applicant applied for the visa on 29 April 2021. The delegate refused to grant the visa on the basis that the applicant did not satisfy the requirements of cl 500.217 of Schedule 2 to the *Migration Regulations 1994* (Cth) (the Regulations) because the applicant did not satisfy Public Interest Criteria (PIC) 4020.
6. The applicant appeared before the Tribunal on 13 January 2022 by Microsoft Teams audio visual to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Urdu (Pakistan) and English languages.
7. Mr Siddque, who was appointed by the applicant on 5 January 2022, also attended the Tribunal hearing.
8. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

CONSIDERATION OF CLAIMS AND EVIDENCE

9. Subclause 500.217(1) of Schedule 2 to the Regulations requires that the applicant satisfy public interest criteria 4001, 4002, 4003, 4004, 4010, 4013, 4014, **4020** and 4021.
10. The issue in this review is whether the visa applicant meets Public Interest Criterion 4020 (PIC 4020) as required by cl 500.217 for the grant of the visa. Broadly speaking, and relevant in this case, this requires that:
 - there is no evidence that the applicant has given, or caused to be given, to the Minister, an officer, the Tribunal, a relevant assessing authority, or Medical officer of the Commonwealth, a bogus document in relation to the application for the visa or a visa that the applicant held in the 12 months before the application was made: PIC 4020(1); and
 - the applicant and each member of the family unit has not been refused a visa because of a failure to satisfy PIC 4020(1) during the period starting 3 years before the application was made and ending when the visa is granted or refused, unless the applicant was under 18 at the time the application for the refused visa was made: PIC 4020(2) and (2AA); and
 - the applicant satisfies the Minister as to his or her identity: PIC 4020(2A); and
 - neither the applicant nor any family unit member has been refused a visa because of a failure to satisfy PIC 4020(2A) during the period starting 10 years before the application was made and ending when the visa is granted or refused, unless the applicant was under 18 at the time the application for the refused visa was made: PIC 4020(2B) and (2BA).
11. The requirements in PIC 4020(1) and (2) can be waived if there are certain compelling or compassionate reasons justifying the granting of the visa: PIC 4020(4). However, this

waiver does not apply to the identity requirements in PIC 4020(2A) and (2B). PIC 4020 is extracted in the attachment to this decision.

12. The Tribunal has considered information on the Department and Tribunal files, the applicant's oral evidence given at the scheduled hearing and any other relevant matters. In reaching a decision. The applicant provided additional information in support of the application, both before and after the Tribunal hearing.

Has the applicant given, or caused to be given a bogus document, or information that is false or misleading in material particular?

13. At the commencement of the Tribunal hearing, the meaning of bogus document was explained to the applicant. The applicant was informed that even if the Tribunal decides that he does not meet the PIC 4020(1) criteria, the Tribunal will go on to consider if there are circumstances (as described in PIC 4020(4)) that would justify waiving the criteria, before making a decision on the review.

14. The term 'bogus document' is defined in s 5(1) of the Act:

15. ***bogus document***, in relation to a person, means a document that the Minister reasonably suspects is a document that:

16. (a) *purports to have been, but was not, issued in respect of the person; or*

17. (b) *is counterfeit or has been altered by a person who does not have authority to do so; or*

18. (c) *was obtained because of a false or misleading statement, whether or not made knowingly.*

19. The requirement in PIC 4020(1) not to provide a bogus document applies whether or not the Minister became aware of the bogus document because of information given by the applicant: PIC 4020(3). It also applies whether or not the document or information was provided by the applicant knowingly or unwittingly. There is no requirement that a document reasonably suspected to be a bogus document be relevant to a criterion for the grant of the visa. PIC 4020 only requires evidence that a bogus document has been submitted, not that a document that has been submitted is bogus. That said, an element of fraud or deception by some person is necessary to attract the operation of PIC 4020.

20. In addition to the invitation to provide additional documentary and oral evidence in support of the application, the applicant was also invited to comment on or respond to adverse information contained in documents on the Department file identified in a Non-Disclosure Certificate (NDC) issued under s.375A of the Act, signed and dated 22 December 2021.

21. The visa was refused because the delegate held a reasonable suspicion that the applicant provided a bogus document relating to the visa application. The document in question, that was found by the delegate to be a ***bogus document*** as defined in s.5(1) of the Act, is a two page document:

22. *An Account Maintenance Certificate dated 23 April 2021 and Statement of balance as at 22 April 2021 of Rs.4,000,000/-, purportedly issued by the Invest Capital Investment Bank Limited (ICIBL), Head Office, 2-H, Gulberg II, Lahore, Pakistan (ICIBL), telephone number (92 42) 35777285-86, in the name of the financial sponsor Khalid Mehmood (the AMC document). It is indicated in the AMC document that the deposit was made on 15 April 2021. The AMC document is signed but the names of the two signatories are not included.*

23. The visa application was made on 27 August 2021. The AMC document, along with a number of other documents, accompanied the visa application and were received by the Department on 29 April 2021, the same date the online application was generated.

24. The Department's s.57 natural justice letter and the applicant's response

25. When assessing the visa application, on 9 July 2021 the Department sent a letter to the applicant, pursuant to s.57 of the Act, commonly referred to as a natural justice letter. In the letter the applicant was informed, among other things, that a Departmental Officer had conducted checks in February 2021 to confirm the information in the AMC document and concluded;
- there are no bank offices at the address (on the AMC document)
 - the telephone number on the AMC document is registered with Pakistan Telecommunication Company (PTCL) but is listed to a business that is not ICIBL; and
 - ICIBL does not operate as a genuine bank for financial purposes.
26. The applicant was invited to respond to or comment on the adverse information, within 28 days. A response was received by the Department 9 July 2021, by way of a typewritten note from the applicant which included the following relevant information:
- The applicant applied for the visa on 29 April 2021
 - He now 'came to know about this bank issue'
 - The bank 'was very renowned and well-known'
 - His father was unaware of the issue and has 'withdrawn his account'
 - His father has provided another account maintenance certificate (from BankIslami)
27. There are Department notes about the case on the Department file, including that the application was identified as part of a 'large cohort providing fraudulent financial information from Invest Capital Investment Bank Limited'. This and other information has been provided to the applicant in a letter sent to him by the Tribunal on the review, and is discussed later.

28. The review application and s.375A non-disclosure certificate

29. On 6 January 2022, the Tribunal received a large bundle of documents from the applicant including, relevantly:
- a. A written submission signed by the applicant, dated 5 January 2022 including, in summary:
 - i. The AMC document, dated 22 April 2021, post-dates the Department's checks which were undertaken in February 2021
 - ii. On the basis of the checks (as they are described in the Department's s.57 natural justice letter; see paragraph 16. above) the delegate concluded applicant had provided a bogus document relating to his visa application
 - iii. That the applicant understands the Department 'may' have conducted checks, but he is 'not entirely sure' how the Department concluded 'ICIBL does not exist and does not operate for financial purposes'

- iv. The Department's findings are incorrect and the 'purported check is very confusing as it lacks credibility'
 - v. The applicant cites the case of *Trivedi* relating to a mental element in relation to the applicant giving false or misleading information
- b. A number of documents including from the Securities and Exchange Commission of Pakistan (SECP) confirming that ICIBL is licensed to carry on business as a Non-Banking Financial Company (NBFC); two invoices from PTCL dated November 2021 for the phone numbers included on the AMC document, 042-35777286-85; updated affidavit of sponsorship from the applicant's father, dated 6 July 2021 referring to the account he holds with BankIslami, declaring he has the financial capacity to fund the applicant's studies in Australia
 - c. The applicant claims not to have 'given information that was purposely false or purposely untrue, nor has been indifferent'
 - d. The applicant 'provided an Account Maintenance Certificate in support of my (his) financial ability to cover my (his) expenses in Australia; the certificate was issued by ICIBL and his father used to hold the necessary funds with ICIBL.
 - e. He informs the Tribunal that 'last week', which is taken by the Tribunal to be around the first week of January 2022 on the basis that the statement is dated 6 January 2022, he spoke to his education consultant who told him that 'all student who have provided financial statements from ICIBL have issues with the proof of funds'.
 - f. The applicant intends to finish his degree and return to his home country
 - g. The circumstances of his case are 'unusual'
30. A copy of the NDC (Department Ref ID number ADD2021/6980246), mentioned earlier, was provided to the applicant with a s.359A letter sent by the Tribunal informing him of adverse information relating to him. The NDC was issued under s.375A of the Act which, in summary, covers information that is not to be disclosed to anyone but the Tribunal for reasons of public interest. It is a requirement, pursuant to s.375A(2)(b) of the Act, that the Tribunal, having been given the document or information, 'must do all things necessary' to ensure it is not disclosed to any other person. However, the Tribunal may provide an applicant with the gist, or essence, of the information that is the subject of the NDC.
31. The NDC refers to specific TRIM file numbers on the Department file. The copy of the NDC provided to the Tribunal is in the Department electronic file in the Tribunal system. The Tribunal is satisfied it is dated 6 January 2022 and electronically signed by a Delegate of the Minister for Home Affairs and Delegate of the Secretary of the Department of Home Affairs (position number included).
32. On 12 January 2022, the Tribunal wrote to the applicant informing him of adverse information, which engaged the Tribunal's obligations under s.359A of the Act. The applicant was invited to comment on the validity of the NDC and to comment on or respond to certain information which, subject to his comments or response, would be the reason or a part of the reason for affirming the decision under review; the information was particularised and reasons given. The pertinent part of the letter is as follows:

'The Department has placed on your visa application file a non-disclosure certificate, relating to investigative reports into the Invest Capital Investment Bank (ICIBL). The certificate was issued by a delegate of the Minister for Immigration on 22 December 2021 under s 375A of the Migration Act 1958 (the Act). A copy of the s.375A certificate is attached and you are invited to comment on the validity of the certificate. The Tribunal is of the view that the certificate is legally valid.

Your visa was refused because you did not meet the Public Interest Criteria 4020 (PIC 4020). This was because a statement you provided in support of your student visa application, that is the subject of this review, was found to be a bogus document. The relevant two-page document that you provided, which is on the Department file, is:

- Account Maintenance Certificate from Invest Capital Investment Bank (ICIBL) located at 2-H, Gulberg-II, Lahore, Telephone Number: (92 42) 35777285-86, issued on 23 April 2021, in the name of Mr Khalid Mehmood.*

The Account Maintenance Certificate from ICIBL (the statement), Department Document ID: 8825328, provided by you in support of the visa application on 29 April 2021, is attached for your ease of reference.

A delegate of the Minister for Home Affairs has certified, in accordance with s.375A of the Act, that the disclosure of the specified TRIM reference numbers for file number ADD2021/6458809 and ADD2021/6458791, other than to the Administrative Appeals Tribunal (AAT), would be contrary to the public interest because it would reveal investigative methods, identities of personnel who have not consented to further disclosure, and to information sharing arrangements with a foreign country. These documents relate to the investigation into ICIBL.

The AAT must do all that is necessary to ensure the documents or information are not disclosed to anyone other than a member of the AAT. We may, however, provide you with the gist of the information, which we have chosen to do in your case, as follows:

- a) In early 2021, the ICIBL was identified as a bank of concern in the Pakistan student visa caseload and an investigation was undertaken relating to a large number of student visa applications with the statement of funds provided by ICIBL.*
- b) Through the investigation, it is reported;*
 - a. ICIBL has been identified as a 'ghost' bank*
 - b. ICIBL has provided statements, to students from Pakistan applying for an Australia student visa, of funds that do not exist or do not belong to the student visa applicant or their financial sponsors*
 - c. The arrangements were made by a third party, for payment of a fee.*
 - d. The student visa applicants were referred to or put in touch with the third party by the head office verification officer at ICIBL*

- c) *The statement given by you to the Minister, in support of your subclass 500 student visa application made on 29 April 2021, contains features that were identified in the investigation as common in documentation issued by ICIBL. In particular, the bank statement you provided lists a single large credit to the account, and no other transactions.*

This information is relevant because you provided the statement as evidence of your having access to sufficient funds to support yourself during your stay in Australia, relating to the subclass 500 student visa application you lodged on 29 April 2021. If the Tribunal relies on the above information relating to the investigation into ICIBL that is included in the documents with the folio numbers specified in the s.375A nondisclosure certificate, the Tribunal may reasonably suspect that the statement you provided in relation to a person is a bogus document, as defined in s.5(1) of the Migration Act 1954, because it is counterfeit or has been altered by a person who does not have authority to do so. In which case, you would not meet public interest criterion 4020(1). This would be the reason, or a part of the reason, for affirming the decision that is under review.

You are invited to give comments on or respond to the above information in writing.

*Your comments or response should be received by **27 January 2022.***

33. The Tribunal hearing was held on 18 January 2022. On 27 January 2022, it was discovered that the copy of the s.375A NDC that was sent to the applicant did not contain the delegate's signature. The NDC on the Tribunal's electronic copy of the Department does contain the delegate's signature and it was this signed copy of the NDC that the Tribunal considered and was satisfied was legally valid. What appears to have happened is, when the NDC was converted to a PDF and sent to the applicant, attached to the Tribunal's s.359A letter dated 12 January 2022, the delegate's signature was not captured. The Tribunal notified the applicant of the technical or IT issue relating to the signature and provided him with a full copy of the NDC on 27 January 2022, clearly showing the signature on the copy held in the Tribunal's electronic system on the Department file. The applicant was informed that, in these circumstances, the date for his comments or response relating to the validity of the NDC had been extended to 10 February 2022.
34. On 27 January 2022, the Tribunal received additional documents from the applicant, including:
- A written response, and comments, to the Tribunal's letter sent on 12 January, including in summary:
 - The applicant understands that to be 'eligible for the criteria of Ghost Bank, ICIBL needs to be of non-existence in Pakistan'; he refers to his father visiting ICIBL head office and taking the video provided
 - ICIBL has a significant online presence indicating that it exists
 - The AMC document is valid and he has access to the funds

- Copies of photographs of ICIBL external and internal signage at the Zahidjee House, Gulberg II address in Lahore, and people working at desks in an office environment
- Videos of ICIBL, exterior and interior, at the same address as the photographs
- He has access to funds held by his father with BankIslami and he has also transferred \$32,000AU to Australia for the purchase of a Lexus car in October 2021, and provided documentary evidence of the purchase
- There was no third party involved in obtaining the AMC document because he 'did not have to go through such arrangements' because his father has access to funds, as evidence by the BankIslami statement
- Although the Department claims to have verified his AMC document through a 'third party in the head office of ICIBL', he is not aware that the Department did so.
- The 'Department's claim about ICIBL may be true but is not substantiated in my (his) case'.
- The applicant did not knowingly provide a document that is bogus or 'given any information that was purposely false or untrue'
- The applicant claims that the AMC document is genuine and refers the Tribunal to date of the single transaction/deposit of PKR4,000,000.00 on 15 April 2021, and that 'within 14 days since the opening of the bank account' there were no additional transactions because ICIBL is 'an investment fund (and) does not allow its patrons to transact in a manner that commercial Banks do'; his father did not make any withdrawals in the two week period after the date the account was opened on 15 April 2021.

35. Findings

36. The Tribunal has considered the applicant's written submissions, the supporting documents he has provided and his oral evidence given at the scheduled hearing and other relevant information and makes the following findings and comments.
37. On the evidence, the Tribunal accepts that ICIBL's head office is at Zahidjee House at the Gulberg II address in Lahore and that the phone numbers on the two phone bills provided confirm that the accounts are held by ICIBL for the numbers that appear on the AMC document; and that ICIBL is licensed by the SECP to carry on business as a NBFC.
38. The Tribunal acknowledges that the applicant has provided an affidavit of sponsorship from his father, signed and dated 23 April 2021, and an updated affidavit of sponsorship dated 6 July 2021, plus an alternative financial statement from BankIslami dated 5 July 2021 for an account held by Khalid Mehmood in the amount of PKR4,000,000. However, the financial capacity of the applicant's father is not material to the substantive issue on review.
39. Consideration has been given to evidence provided in support of the applicant's claims that the funds were in the ICIBL account, relating to the AMC document, that his father did not transact on the account between 15 April 2022 and the date of the visa application and at the end of June 2021 his father closed the ICIBL account. However, there is no probative evidence that satisfies the Tribunal as to any of these claims.

40. It is acknowledged that the applicant submits that the Department's checks into ICIBL lack credibility and are confusing and his submission has been considered. The Tribunal agrees that the Department's statement in its natural justice letter that there are no bank offices at the address is confusing. However, the Tribunal gives significant weight to the findings made by the Department overall relating to its investigation into ICIBL as a 'bank of concern'. The Tribunal provided the applicant, insofar as it could, with more particulars than the Department did. The applicant was informed by the Tribunal in the letter sent on 13 January 2022 that the Department's investigation related to a 'large number of student visa applications with the statement of funds provided by ICIBL' and that his AMC document contains features 'that were identified in the investigation as common with documentation issued by ICIBL'. The applicant was informed that ICIBL provided statements to students from Pakistan applying for an Australian student visas of funds that do not exist or do not belong to the student or their financial sponsor, and they have uncovered that the applicants were put in touch with or referred to a third party by an employee of ICIBL for payment of a fee, to obtain the financial statements. The Tribunal gives significant and substantial weight to the veracity of the findings made by the Department about these matters.
41. It is acknowledged, as it has been submitted by the applicant, that his AMC document post-dates the time of the Department's investigation, which was in February 2021. However, the Tribunal considers it a reasonable proposition that this would not preclude the Department identifying the applicant's statement as having features in common with the fraudulent documents that were being issued by ICIBL at least up to the date that the applicant was sent the natural justice letter, on 9 June 2021. This was some two or so months after the visa application was lodged and the Tribunal is satisfied that the information provided to the applicant, included in the documents that are the subject of the NDC, confirm that his AMC document was identified along with others as one issued by ICIBL relating to the investigation.
42. The Tribunal acknowledges that the applicant has raised the case of *Trivedi* (and cases cited as authority in *Trivedi*), however the substantive issue on review is whether the AMC document is a bogus document, which was the reason the visa was refused. The Tribunal need not consider whether the applicant provided false or misleading information in a material particular. There is a distinction between the evidence of giving 'information that is false or misleading in a material particular' and evidence of the giving of a 'bogus document'. While PIC 4020 implies the need for 'probative evidence', PIC 4020 only requires evidence that a bogus document has been submitted, not that a document that has been submitted is bogus. Therefore, if a document which is found to be bogus under the 'relatively undemanding test' of 'reasonable suspicion' has been submitted in connection with a visa application, no more is needed to show that there is 'evidence' of the sort referred to in cl 4020(1).
43. In this case, the applicant does not dispute that he 'submitted' the AMC document. The applicant has submitted in writing that he provided the AMC document with his visa application.
44. Essentially, once given and where the Tribunal is satisfied that the AMC document was given by the applicant relating to the visa application, the AMC document cannot be 'ungiven' and a later or new account maintenance certificate from a different financial institution provided to displace or replace the earlier AMC document.
45. It is acknowledged that the applicant has submitted that the Department did not 'substantiate' its findings relating to his case, relating to the AMC document. However, the Tribunal need only hold a reasonable suspicion that the AMC document is a bogus document, once it has considered relevant evidence and information.

46. The Tribunal has carefully considered the evidence and other relevant matters and, for the reasons given, holds a reasonable suspicion that the AMC document is a bogus document that is counterfeit or has been altered by a person who does not have authority to do so.
47. The Tribunal is further satisfied that the applicant has given, or caused to be given, to the Minister, an officer, the Tribunal, a relevant assessing authority or a Medical Officer of the Commonwealth, a bogus document as defined in s.5(1)(b) of the Act in relation to the visa application.
48. Therefore, the applicant does not meet PIC 4020(1).

Should the requirements of PIC 4020(1) or (2) be waived?

49. The requirements of PIC 4020(1) and (2) may be waived where there are compelling circumstances that affect the interests of Australia, or where there are compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident, or an eligible New Zealand citizen (as defined in reg 1.03), that justify the granting of the visa.
50. The applicant was informed of the waiver provisions and that he may claim they apply in his case. He confirmed that he was not making any claim that either of the provisions in PIC 4020(4)(a) or (b) apply in his case.
51. In the circumstances, the requirements of PIC 4020(1) should not be waived.

52. Conclusion

53. On the basis of the above, the applicant does not satisfy PIC 4020 for the purposes of cl 500.217.

DECISION

54. The Tribunal affirms the decision not to grant the applicant a Student (Temporary) (Class TU) visa.

Jennifer Cripps Watts
Senior Member

ATTACHMENT

Migration Regulations 1994

Schedule 4

- 4020 (1) There is no evidence before the Minister that the applicant has given, or caused to be given, to the Minister, an officer, the Tribunal during the review of a Part 5 reviewable decision, a relevant assessing authority or a Medical Officer of the Commonwealth, a bogus document or information that is false or misleading in a material particular in relation to:
- (a) the application for the visa; or
 - (b) a visa that the applicant held in the period of 12 months before the application was made.
- (2) The Minister is satisfied that during the period:
- (a) starting 3 years before the application was made; and
 - (b) ending when the Minister makes a decision to grant or refuse to grant the visa;
- the applicant and each member of the family unit of the applicant has not been refused a visa because of a failure to satisfy the criteria in subclause (1).
- (2AA) However, subclause (2) does not apply to the applicant if, at the time the application for the refused visa was made, the applicant was under 18.
- (2A) The applicant satisfies the Minister as to the applicant's identity.
- (2B) The Minister is satisfied that during the period:
- (a) starting 10 years before the application was made; and
 - (b) ending when the Minister makes a decision to grant or refuse to grant the visa;
- neither the applicant, nor any member of the family unit of the applicant, has been refused a visa because of a failure to satisfy the criteria in subclause (2A).
- (2BA) However, subclause (2B) does not apply to the applicant if, at the time the application for the refused visa was made, the applicant was under 18.
- (3) To avoid doubt, subclauses (1) and (2) apply whether or not the Minister became aware of the bogus document or information that is false or misleading in a material particular because of information given by the applicant.
- (4) The Minister may waive the requirements of any or all of paragraphs (1)(a) or (b) and subclause (2) if satisfied that:
- (a) compelling circumstances that affect the interests of Australia; or
 - (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen;
- justify the granting of the visa.
- (5) In this clause:
- information that is ***false or misleading in a material particular*** means information that is:
- (a) false or misleading at the time it is given; and
 - (b) relevant to any of the criteria the Minister may consider when making a decision on an application, whether or not the decision is made because of that information.

...

Migration Act 1958

s 5 Interpretation

(1) In this Act, unless contrary intention appears:

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly.

...